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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,378	02/01/2002	William C. Johnson	102-02	2400

7590  
William M. Selenke  
28 DeWitt Street  
Cincinnati, OH 45218

06/04/2003

EXAMINER

WEISS JR, JOSEPH FRANCIS

ART UNIT	PAPER NUMBER
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3761

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4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/061,378

Applicant(s)  
Selenke

Examiner  
Joseph Weiss

Art Unit  
3761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Feb 1, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 recites the limitation "the craft's ventilation duct" in line 8. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 2 recites the limitation "the cargo space" in line 1. There is insufficient antecedent basis for this limitation in the claim.

5. Claim 2 recites the limitation "said aircraft" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence (US 1614739) in view of Wallroth (US 6095137).

In regards to claim 1, Lawrence discloses a device that is fully capable of lessening dangers to passengers in hi-jack situations comprising an enclosed hardened system (1) with an activation means (7), said activation means being accessible through a security device (12) and the enclosed system containing mechanical or electrical controls (6 & 8) to activate a reservoir (2) of volatile somnolent substance, and a means to vaporize said substance (5), and which is fully capable of releasing the substance into a ventilation duct (9), which is released at a level that induces sleep (bottom of column 1), but does not explicitly disclose an activation means in the form of a valve to control gas from its igniter. However, Wallroth disclose such (see valve 17). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Wallroth and used them with the device of Lawrence. The suggestion/motivation for doing so would have been to regulate the gas generated by the igniter to optimize its delivery. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

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In regards to claim 2, the suggested device is fully capable of being placed in the inaccessible portion of an aircraft's cargo space.

In regards to claim 3, suggested device discloses the use of metal in making his hardened system. (1)

In regards to claim 4, the reference noted above substantially disclose the claimed invention except for the use of reinforced plastics.

It is noted that applicant's specification does not set forth this feature, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 5, the reference noted above substantially disclose the claimed invention except for the use of a hand/manual valve.

It is noted that applicant's specification does not set forth a manual/hand valve, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

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Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary. (I.e. a known interchangeable equivalent to an electric valve)

In regards to claim 6, the suggested device discloses an electric valve (17).

In regards to claim 7, the reference noted above substantially disclose the claimed invention to include an electronic push button security system, but does not disclose the use of a 2 key activation system.

It is noted that applicant's specification does not set forth the 2 key system, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather

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than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.(e.g. military missile launch systems)

In regards to claim 8, the reference noted above substantially disclose the claimed invention to include an electronic push button security system but does not disclose use of an alpha-numeric keypad.

It is noted that applicant's specification does not set forth the alpha-numeric keypad, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 9, the reference noted above substantially disclose the claimed invention to include the use of incapacitating gases except for those specific gases as set forth by applicant.

It is noted that applicant's specification does not set forth these gases, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

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Accordingly, the examiner considers the selection of such to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary. (Note Lawrence col. 3 lines 34-38)

In regards to claim 10, Lawrence discloses the use of heat from an electric heater to vaporize the gas.

In regards to claim 11, Lawrence substantially discloses the instant application's claimed invention, but does not explicitly disclose use of a monitoring means to sense the level of incapacitating gas. However, Wallroth disclose such (9, see col. 3 lines 16-20 ). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Wallroth and used them with the device of Lawrence. The suggestion/motivation for doing so would have been to better control and modulate the amount of incapacitating gas to prevent death or injury to the passengers/terrorists (e.g. prevent another Russian military Chechen Theater debacle). Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.



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Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 12, the prior art device is fully capable of being used on a ship.

In regards to claim 13, the prior art device is fully capable of home protection use.

In regards to claim 14, the prior art device is fully capable of being used in a bank.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6499693, 5809999, 5199423, 5022393, 4651728, 4522359, 4057205, 3981300, 3704845, 3680499, 3672388, 3658277, 3593735

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph F. Weiss, Jr., whose telephone number is (703) 305-0323. The Examiner can normally be reached from Monday-Friday from 8:30 AM to 4:30 PM. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Weilun Lo, can be reached at telephone number (703) 308-1957. The official fax number for this group is (703) 305-3590 or x3591. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

  
J. F. Weiss

May 20, 2003

  
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